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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible]

No. [illegible]

GULF OIL CORPORATION, *Petitioner*

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 715, AFL-CIO, *Respondent*

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Fifth Circuit

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While the Supreme Court in *Warrior and Gulf Navigation Company*, required arbitration in a case where there was a "broad" arbitration clause, giving particular effect to the no-strike clause in the contract, an entirely different situation is presented with an extremely "narrow" arbitration clause; and the effect of a no-strike clause is limited by the breadth of the arbitration clause in a contract. The answer to this important question requires the decision of the Supreme Court	5
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INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 715, AFL-CIO, *Respondent*

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
For the Fifth Circuit

The Petitioner Gulf Oil Corporation prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the 5th Circuit entered on June 24, 1960 (R. 91, App. 1), and judgment upon its Petition for Rehearing entered July 21, 1960 (R. 100, App. 2), affirming the judgment of the United States District Court for the Western District of Texas (R. 73-74).

OPINIONS BELOW

The District Court granted respondent's motion for summary judgment finding that the discharge of K. T. Cantner is a subject which under the terms of the collective bargaining agreement between the par-

ties, is a matter for arbitration and ordered petitioner to submit to arbitration the matter of Cantner's discharge. Petitioner's counter motion for summary judgment was denied. (R. 73-74). The opinion of the Court of Appeals appears herein as Appendix 3.

JURISDICTION

The judgment of the Court of Appeals was dated and entered on June 24, 1960, (R. 91, App. 1) and petition for rehearing was denied on July 21, 1960, (R. 100, App. 2).

QUESTIONS PRESENTED

1. Where the arbitration clause in a collective bargaining agreement is extremely "narrow," restricting arbitration to "matters properly arising under this contract" and prohibiting the arbitrators from attempting "to interpret any matter outside of the agreement," and discharges are not mentioned in the contract, does the mere presence of a no-strike clause in the contract make the matter arbitrable?

2. Where a bargaining agreement is so narrow that it restricts arbitration to conflicts "properly arising under this contract" and prohibits the arbitrators from attempting to "interpret any matter outside of the agreement" and discharges are not mentioned in the agreement, does a discharge become arbitrable simply because the Union claims discrimination for Union activity?

STATUTE INVOLVED

Respondent seeks to maintain its suit against petitioner under authority of Section 301 of the National Labor Relations Act 29 U.S.C.A., Section 185 (61 Stat. 156):

> "(a) Suits for violation of contracts between an employee and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE

Appellee International Union of Operating Engineers, Local No. 715, AFL-CIO (hereinafter called Union) sued in the United States District Court for the Western District of Texas under Section 301 of the Labor Management Relations Act to compel arbitration of the discharge by Appellant Gulf Oil Corporation (hereinafter called Gulf) of one K. T. Cantner (R. 2-5). He was discharged by Appellant in Crane County, Texas, after he had been discovered doing work for another concern during his regular working hours for Gulf and while he was being paid by Gulf (R. 67-68). Appellant Gulf urged that there was no agreement to arbitrate the discharge under the collective bargaining agreement between the parties (R. 5-9). It further alleged that the National Labor Relations Board had jurisdiction of the dis-

charge as being based on a claim of discrimination for union activity. Gulf's motion to dismiss for want of jurisdiction was granted, and judgment was entered for it on a finding by the trial court that the complaint constituted an unfair labor practice within the meaning of the applicable law.

On appeal to the Court of Appeals, the judgment of the trial court was reversed and remanded, that Court holding (International Union of Operating Engineers, Local No. 715, AFL-CIO v. Gulf Oil Corporation, 262 F. (2) 80) that the trial court's judgment is "contrary to the decision of such Court in Lodge No. 12, etc. v. Cameron Iron Works, Inc., 257 F. (2) 467 and the cases in notes thereto (Cf. Item Co. v. N. O. Newspaper Guild, 256 F. (2) 855.)"

On remand, plaintiff urged its motion for summary judgment, claiming that Cantner's discharge is arbitrable under the discrimination clause in the contract. (R. 43-61)

Defendant Gulf answered plaintiff's motion and urged a cross action for summary judgment, alleging among other things, that the hiring and discharge of employees is in no manner referred to in nor comprehended by said colletive bargaining agreement between the parties and that Gulf has in no wise bargained away or restricted its right to hire and discharge any employee, and prayed for summary judgment declaring Cantner's discharge not arbitrable. (R. 61-72)

Gulf Oil Corporation appealed to the United States Court of Appeals for the Fifth Circuit from a judg-

ment of the District Court, entered on August 24, 1959, overruling Appellant Gulf's motion for summary judgment and sustaining Appellee Union's motion for summary judgment and ordering Appellant to submit to arbitration the matter of the discharge of K. T. Cantner under the collective bargaining agreement between Appellant and Appellee. (R. 73-74)

On June 24, 1960, the Court of Appeals entered judgment affirming the judgment of the trial court requiring Gulf to arbitrate Cantner's discharge. (R. 85, App. 1). Order was entered denying Appellant petition for rehearing on July 21, 1960 (R. 100, App. 2) The Court's opinion is at Page 85 of the record and is App. 3.

REASONS FOR GRANTING THE WRIT

While the Supreme Court in *Warrior and Gulf Navigation Company*,[1] required arbitration in a case where there was a "broad" arbitration clause, giving particular effect to the no-strike clause in the contract, an entirely different situation is presented with an extremely "narrow" arbitration clause, and the effect of a no-strike clause is limited by the breadth of the arbitration clause in a contract. The answer to this important question requires the decision of the Supreme Court.

The Court of Appeals based its decision in this case on its conclusion that the contract relied on by both

[1] *United Steelworkers of America v. Warrior and Gulf Navigation Company*, United States Supreme Court, decided June 20, 1960, 4 Law Ed. (2) 1409.

the Union and the Gulf, by its *express provisions* makes arbitrable the matter in dispute.

It is true that the contract states that there shall be no discrimination on account of membership or non-membership in any church, society, fraternity or union; and the bargaining agreement sets up an arbitration proceeding under which the agreement of a majority of the arbitrators shall be final and binding upon both parties as to any conflict "*properly arising under this contract*" and referred to said Arbitration Committee.

But the mere contention of the Union that Cantner's discharge was for Union activity does not in itself make the matter arbitrable. If that were enough to make a matter arbitrable, then the Union could require arbitration of any circumstance, even though it be outside the contract, by simply making the claim that discrimination for Union activity was involved.

Discharges, whether for Union activity, or otherwise, are not mentioned in the bargaining agreement between the Gulf and Union, and here we do not have a "broad" or standard arbitration clause. The arbitration clause in the Gulf-Union contract is extremely "narrow."

And in this very circumstance there is a marked distinction between the case at bar and *Warrior and Gulf Navigation*, just decided by this Honorable Court. There, managerial functions were expressly excepted from the contract, but the Supreme Court held that the matter of contracting-out work was none the less subject to the grievance procedure be-

cause the parties had used a *broad* arbitration clause providing for arbitration of all disputes between the parties "as to the *meaning* and *application* of this agreement or *should any legal trouble of any kind arise*." In *American Manufacturing Company*[2] there was an express provision in the contract for arbitration of all disputes between the parties "as to the *meaning, interpretation*, and application of the provisions of this agreement." In *Enterprise Wheel & Car Corporation*[3] the contract provided that any differences "as to *meaning* and *application*" of the agreement should be submitted to arbitration.

The Supreme Court found in *American Manufacturing Company*, that "the agreement is to submit all grievances to arbitration." Mr. Justice Brennan in his concurring opinion stated "the case might, of course, be otherwise with the arbitration clause being very narrow." In *Warrior and Gulf Navigation Company* the Supreme Court bottomed its decision on the broad character of the arbitration clause, because it said of the bargaining agreement: "but it goes on to say that if 'differences arise' or if 'any legal trouble of any kind arises, the grievance procedure shall be applicable'." The Court said further "In the absence of any express provisions excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as

[2]*United Steelworkers of America v. American Manufacturing Company*, United States Supreme Court, decided June 20, 1960, 4 Law Ed. (2) 1403.

[3]*United Steelworkers of America v. Enterprise Wheel and Car Corporation*, United States Supreme Court, decided June 20, 1960, 4 Law Ed. (2) 1424.

here, the exclusion clause is vague *and the arbitration clause is quite broad.*"

So it is clear that the decisions just handed down by the Supreme Court in these three cases have their basis in the use of the broad or "standard" form of arbitration clause. In the Gulf case the arbitrators are limited to any conflict "*properly arising under this contract*" and it is specifically provided that the arbitrators "shall not attempt to interpret *any matter outside of the agreement.*"

CONCLUSION

We submit that the Supreme Court's statement in *Warrior and Gulf Navigation Company* as to the effect of a no-strike clause is perforce governed by the scope of the arbitration clause. The obligation on the part of the Union not to strike is no broader than the arbitration clause. Here the arbitration clause is restricted to matters "*properly arising under this contract.*" And the arbitrators are prohibited from "any attempt to *interpret any matter outside of the agreement.*" Since discharges are not in the agreement unless they are expressly put there by the parties or unless the language of the arbitration clause is broad enough to include them, the Supreme Court's decision is not authority for requiring Gulf to arbitrate Cantner's discharge even though there is a no-strike clause in the contract.

We submit that in view of the very "narrow" arbitration clause in the case at bar, and the absence

of any reference to discharges in the bargaining agreement, Cantner's discharge is not arbitrable.

It is accordingly urged that a Writ of Certiorari to review the judgment of the Court below should be granted.

Respectfully submitted,

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PROOF OF SERVICE

I, DAVID W. STEPHENS, counsel of record for Gulf Oil Corporation, petitioner herein, hereby certify that on the 9th day of August, 1960, I served copies of the foregoing petition for writ of certiorari on Sam Houston Clinton, Jr., attorneys for respndent, International Union of Operating Engineers, Local No. 715, AFL-CIO, at his office, 402 W. 13th Street, Austin, Texas, by United States mail in a duly addressed envelope with postage prepaid.

David W. Stephens

DAVID W. STEPHENS

APPENDIX 1

JUDGMENT

Extract from the Minutes of June 24, 1960

No. 17982

GULF OIL CORPORATION,

versus

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 715, AFL-CIO

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Gulf Oil Corporation, and the surety on the supersedeas bond herein, Federal Insurance Company, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

APPENDIX 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17982

GULF OIL CORPORATION,
Appellant,

versus

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 715, AFL-CIO
Appellee.

Appeal from the United States District Court for the Western District of Texas.

(July 21, 1960)

ON PETITION FOR REHEARING.

Before RIVES, Chief Judge, and HUTCHESON and TUTTLE, Circuit Judges.

PER CURIAM:

It is ORDERED that the petition for rehearing in the above entitled and numbered cause, be and it is hereby DENIED.

APPENDIX 3

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17982

GULF OIL CORPORATION,

versus Appellant,

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 715, AFL-CIO

Appellee.

Appeal from the United States District Court for the Western District of Texas.

(June 24, 1960)

Before RIVES, Chief Judge, and HUTCHESON and TUTTLE, Circuit Judges.

HUTCHESON, Circuit Judge: When this case was here before on the appeal of the Union from a judgment dismissing its complaint for want of jurisdiction on the ground that the Labor Board had jurisdiction of the matter complained of, this court reversed and remanded the cause.[1]

The cause is here now on Gulf's appeal from a summary judgment directing it to submit to arbitration "the matter of the discharge of K. T. Cantner * *" as

[1] *International Union of Operating Engineers v. Gulf Oil*, 262 F(2) 80.

required by Article 7 of the collective bargaining agreement.

This time the arguments of Gulf and Union are directed to the issue decided below in favor of the Union whether the grievance dispute presents a question "arising under this contract," and is, therefore, arbitrable under the collective bargaining agreement.

Gulf's position in essence is this: that discharges are the prerogative of the management; that they are not mentioned in the contract; that the grievance procedure provides that the arbitrators "shall not attempt to interpret any matter outside of the agreement; and that because these things are so, discharges are not subject to arbitration. In support of this position it cites and relies on two cases from this court, *Refinery Employees Union v. Continental Oil Co.*, 268 F(2) 447; and *United Steelworkers v. Warrior and Gulf Navigation Co.*, 269 F(2) 633. Arguing: that it was simply exercising its managerial prerogative in discharging Cantner; that it is its common law right to select its employees and terminate their employment at will, *United States Steel v. Nichols*, 229 F(2) 396; and that this right was not abridged, nor was its abridgement even mentioned in the bargaining agreement; appellant urges upon us that the judgment was wrong and must be reversed.

The Union, on its part, citing and relying on *Machinist Local 1912 v. U.S. Potash Co.*, 270 F(2) 496, Judge Rives' dissenting opinion in *United Steelworkers v. Warrior and Gulf Navigation Co., supra*, and the grant of certiorari in that case, insists that the

district judge was right and the judgment must be affirmed.

We need not, we think, concern ourselves here with *whether the decisions invoked by* appellant or those invoked by appellee are correct, for the reason that the contract relied on here by both Union and Gulf, by its express provisions makes arbitrable the matter in dispute. The first of these provisions is Art. 15, Sec. 1, "Discrimination": There shall be no discrimination against any employee on account of membership or non-membership in any church, society, fraternity or labor union." The second, Article 7, relating to settlement of disputes and grievances, provides in Section 1, a procedure "for the purpose of adjusting complaints and grievances arising under this contract * * *". One of the steps in it, applicable and effective after that procedure has been followed step by step through the decision of the district production manager without an agreement being reached, is: "If decision of management is not satisfactory, it is hereby agreed that the company will be so notified, * * * and the dispute will, if requested by either party, then be referred to arbitration for settlement." Article 3 of Section 7 provides: "The agreement of a majority of the arbitrators shall be final and binding upon both parties as to any conflict properly arising under this contract and referred to said arbitration committee."

Gulf's statement of the question involved:

> "The question is whether an employer can be required to arbitrate a discharge *when its common-law right to select its employees and termi-*

> *nate their employment at will is in nowise limited by the collective bargaining agreement between the employer and the union.*" (emphasis supplied)

in stating that its right of hiring and firing "is in nowise limited by the collective bargaining agreement." categorically assumes in Gulf's favor the very question to be decided, *whether the matter at issue properly arises under the contract.*

The merits of a suit to compel arbitration, of course do not include the determination (1) of the underlying facts and (2) what the ultimate outcome of the controversy will be. These, if the matter is arbitrable, are for the determination of the arbitrator. What and all that we must pass on here is the correctness of the district court's determination that an arbitrable controversy is presented. *Gooddall-Sanford, Inc. v. United Textile Workers*, 233 F(2) 104.

Gulf does not expressly disagree with this. Its vigorous argument, however, that the record uncontrovertibly supports its view that the discharge was for cause and that it was not, nor was it claimed by the Union to be, because of discrimination for union activity, belies both its original contention that the case was one for the National Labor Relations Board and its general concession that the issue for decision here is not what are the facts as to the reason for the discharge but whether the complaint of the Union presents an arbitrable grievance.

The Union, in its argument in reply, correctly points out:

> "When the parties' respective motions for summary judgment were heard by the district court, the long appellate history of the case had clearly defined the respective contentions of the parties. The Union claimed that the discharge was an act of discrimination against Cantner on account of his union membership and was, as well, violative of other parts of the agreement specifically referred to in its motion for summary judgment. On the other hand, Gulf contended that the discharge was for cause in exercise of its management prerogative and, therefore, not arbitrable. The District Court found for the Union and against Gulf."

It as correctly points, also, to the provisions in the collective bargaining contract, which bring the complaint within its arbitration provisions.

Without, therefore, undertaking to determine what the facts are or will be shown to be in respect of the matter for arbitration or what the decision in the arbitration should be, we decide and hold only that the district court correctly determined that the controversy is arbitrable and that his judgment must be affirmed.

AFFIRMED.

A true copy
Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
By s Clara R. James
Deputy
New Orleans, Louisiana
AUG. 1, 1960
[SEAL]